

# **EXHIBIT “A”**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re: :  
: Case No. 05-44481  
: DELPHI CORPORATION, et al, :  
: :  
: One Bowling Green  
: New York, NY  
Debtors. : January 5, 2006  
-----X

TRANSCRIPT OF OMNIBUS HEARING  
BEFORE THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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1 MR. BERGER: Thank you.

2 THE COURT: Thank you.

3 MR. BUTLER: Your Honor, the next matter on the  
4 agenda, Matter No. 32 is a motion filed by the lead plaintiffs  
5 from the securities litigation for a limited modification of  
6 the automatic stay at Docket No. 1063. It is the first of  
7 three motions on the calendar, the others being matters --  
8 Matter No. 33 and then again back towards the end of the agenda  
9 at Matter No. 37, three contested motions dealing with the lead  
10 plaintiffs' attempt to obtain discovery, and we'll cede the  
11 podium to them to present the motion.

12 THE COURT: Okay.

13 MR. ETKIN: Good morning, Your Honor.

14 Michael Etkin, Lowenstein Sandler on behalf of the  
15 lead plaintiffs as bankruptcy counsel to the lead plaintiffs in  
16 the consolidated securities litigation, and I will present the  
17 initial matter that's on the agenda for today.

18 Your Honor, I'd like to begin by stating the obvious,  
19 that this is a motion for a limited modification of the  
20 automatic stay. It is not a motion seeking to lift the stay so  
21 as to proceed against the debtor in connection with the  
22 securities litigation.

23 What the motion does seek are documents that have  
24 already been assembled, indexed and produced in connection with  
25 various demands for documents by the SEC, by the U.S.

1 Attorney's Office and the FBI as well as documents produced in  
2 connection with the internal investigation commenced by the --  
3 by the debtors.

4 And, also, again I believe stating the obvious --

5 THE COURT: I'm sorry. I thought you were -- when  
6 you say as well as documents produced as part of the internal  
7 investigation, I thought you were seeking only documents that  
8 had already been produced to third parties.

9 MR. ETKIN: That's correct, Your Honor.

10 THE COURT: Okay. Maybe I just misheard you.

11 MR. ETKIN: Yeah. That's correct.

12 THE COURT: Okay. You're saying the third party  
13 would include the internal audit committee's counsel?

14 MR. ETKIN: That's correct, Your Honor, all of course  
15 subject to --

16 THE COURT: So you would count them as a third party  
17 --

18 MR. ETKIN: That's correct, Your Honor.

19 THE COURT: All right. Okay.

20 MR. ETKIN: And all, of course, as we've indicated  
21 and as has been the case in prior orders entered in this  
22 district subject to privilege to the extent that privilege has  
23 not been laid.

24 THE COURT: Okay.

25 MR. ETKIN: Your Honor, and again, just to make it

1 clear to the extent that it isn't, we recognize that this is a  
2 two-step process that initially we need to get relief from this  
3 Court with respect to the limited modification of the automatic  
4 stay, and then we need to proceed to get relief from the  
5 district court in connection with the PSLRA stay. So this --  
6 this motion really must be viewed in that context.

7           Your Honor, in the debtors' opposition, I think we've  
8 been criticized for relying heavily on previous decisions in  
9 Worldcom and Enron which are circumstances that we believe are  
10 identical to the circumstances that are raised with respect to  
11 this motion, and in relying heavily on previous decisions, we  
12 believe that all we've done is do what lawyers are supposed to  
13 do, which is rely on precedent coming out of the same district  
14 that dealt with not only similar sets of fact, but we believe  
15 essentially identical sets of facts.

16           THE COURT: Were those actually litigated decisions?

17           MR. ETKIN: Yes, Your Honor. I was involved. So,  
18 yes, they were litigated. I was involved in the Worldcom  
19 motion and that was litigated, opposed, and Judge Gonzales --

20           THE COURT: So did the -- the orders that you attach  
21 are the result of a decision in a matter that he actually  
22 decided between the parties?

23           MR. ETKIN: That's correct, Your Honor.

24           THE COURT: Fine. Okay.

25           MR. ETKIN: The order in Worldcom was not a



1 stipulated order.

2 THE COURT: Okay.

3 MR. ETKIN: That I can tell you from personal  
4 experience.

5 THE COURT: Okay.

6 MR. ETKIN: Your Honor, even the debtors although  
7 they raise issues as to the precedential value of those  
8 decisions, they even concede in their papers that this  
9 precedent is at the very least highly persuasive, and measuring  
10 this case against the situations in Worldcom and Enron all  
11 involve the backdrop of massive accounting scandals with  
12 enormous losses to the investing public. All involve the  
13 backdrop of pending governmental investigations as well as  
14 internal investigations.

15 As the Court well knows, Your Honor, Enron and  
16 Worldcom were no less complex Chapter 11 cases than the Delphi  
17 case, and the parade of horrors that are speculated by the  
18 debtors as well as the standard floodgates argument that's  
19 conclusorily (sic) raised by the debtors in their opposition  
20 are exactly that: speculation and conclusory allegations.

21 I think the lesson to be learned is best learned from  
22 what happened in Worldcom where that company, the largest  
23 Chapter 11 filed managed to successfully reorganize. Enron as  
24 well successfully confirmed its plan, both with no ill effects  
25 from the limited stay modification orders entered in both of

1 those cases.

2           Your Honor, by making the motion that's before you,  
3 we are simply adopting a position and a procedure that has  
4 already been expressly approved in this district. Again,  
5 there's backdrop of Federal and civil criminal investigations,  
6 acknowledged significant accounting irregularities, years of  
7 accounting restatements, a self-imposed internal investigation  
8 commenced by the debtors, all strikingly similar to the  
9 backdrop of facts and circumstances in Enron and in Worldcom.

10           The debtors in their opposition make this appear as  
11 if this was a class action commenced willy-nilly by some  
12 corporate gadfly, the kind of class actions that the PSLRA  
13 presumably was intended to deal with.

14           Your Honor, as lead plaintiffs in this case appointed  
15 by the District Court, we have state pension funds and  
16 institutional investors, not individual corporate gadflies who  
17 take this matter very seriously on their own behalf and on  
18 behalf of the investors that they now represent as lead  
19 plaintiffs.

20           Your Honor, the debtors have really offered nothing  
21 in their opposition papers to dispute that the documents that  
22 we've requested which have already been produced have been set  
23 aside, have been culled, have been reviewed, have been indexed,  
24 and we specifically in our motion --

25           THE COURT: Well, don't they say that -- I thought

1 they -- I thought they dispute that.

2 MR. ETKIN: I don't see anything specifically in  
3 their papers disputing that. What I did read, Your Honor, is  
4 that there are statements that there's some -- some amorphous  
5 burden that they will at some point in the future attempt to  
6 bring before the Court. I didn't see anything specific in  
7 their papers. I thought that they reserved the right somewhere  
8 in their response to raise these issues or bring these issues  
9 before the Court at some later time.

10 I didn't see any indication that these documents have  
11 not already been set aside and have not already been produced,  
12 and essentially that's why we made the motion. We're not  
13 looking for documents that have not already been pulled  
14 together, set aside and produced.

15 THE COURT: Well, I -- I guess my question comes down  
16 to this. I understand that the orders in Enron and Worldcom,  
17 at least two of the three, you know, expressly recognized that  
18 lifting the stay in the bankruptcy case still leaves to be  
19 decided by the District Court the right of the securities  
20 plaintiffs to get access to the documents under the PSLRA, but  
21 you know, I'm not familiar with the facts of those cases. I  
22 don't know why it was important, for example, for those  
23 litigants to get the documents at that time or at least get  
24 stay relief at that time.

25 But why not let the District Court decide first

1 whether the PSLRA stay applies or not and then -- I mean,  
2 obviously, I would give you relief to the extent you needed it  
3 to seek that relief from the District Court, and then -- then I  
4 could decide on a record as to, you know, how -- how burdensome  
5 if at all under Sonax it is for the debtors to produce this  
6 under the 362 Sonax factors as opposed to deciding it somewhat  
7 in the abstract, because really I don't know what the District  
8 Court is going to do. I mean, is it prejudicial to you just to  
9 -- for me to say for now you're going to go to the District  
10 Court and ask the District judge if the -- if the PSLRA should  
11 be -- the stay under the PSLRA should be lifted, not the  
12 Bankruptcy Code stay, and then I -- ~~then~~ I can decide the  
13 latter stay issue and I can do that on an expedited basis?

14 I mean, you're going to have to do that anyway. So I  
15 don't understand why it's flipped the other way around.

16 MR. ETKIN: Well, Your Honor, we actually don't think  
17 that we flipped it. We think that we've followed the procedure  
18 that's been utilized --

19 THE COURT: Well, I understand. Just humor me for a  
20 minute. If you have to do it anyway, why should I decide this  
21 in the abstract?

22 MR. ETKIN: Well, Your Honor, I don't believe the  
23 Court is deciding this in the abstract --

24 THE COURT: But do I have to decide it at all? I  
25 mean, why should I -- why should I even spend any time on it if

1 it's -- if it's, you know, possible or even more than possible  
2 than the District judge is going to say, well, until the  
3 motions to dismiss are decided, -- I'm not going to give them  
4 relief from the PSLRA.

5 MR. ETKIN: The -- first of all, as the Court knows,  
6 we're acknowledging that this is a two-step process, and if the  
7 Court grants our motion, the debtor certainly does not -- does  
8 not have to produce a document until the PSLRA stay is lifted  
9 as well, and again, the Court actually alluded to an issue that  
10 is one of the issues why we went to the Bankruptcy Court first  
11 in both of those cases, which is that we believe that going to  
12 the District Court first without stay relief would be a  
13 violation of a 362 --

14 THE COURT: Well, but I could give you relief from  
15 the stay to go to the District Court. That's no problem. I  
16 don't have a problem with that.

17 MR. ETKIN: No, I understand you're saying that, Your  
18 Honor, but in terms of the process that we've utilized here,  
19 that's one of the issues that we took into consideration, and  
20 we believe that the issue of getting stay relief, this limited  
21 stay relief from this Court given the fact that these documents  
22 are just sitting there and have already been produced and it  
23 requires really no effort, and I understand --

24 THE COURT: But so that begs the questions. I mean,  
25 if the debtors are going to say it does require effort, then I

1 need to balance Sonax, and that requires a hearing and it may  
2 be a completely advisory or moot issue.

3 MR. ETKIN: Well, that -- the debtors had an  
4 opportunity to lay out in their opposition, Your Honor, what  
5 burdens that they would have to undertake in connection with  
6 producing these types of documents. They chose not to do that,  
7 and those really weren't issues in the prior cases and we  
8 suspect that they really shouldn't be issues here. The  
9 substantive issue of whether the PSLRA stay should be lifted is  
10 obviously a matter for the District Court, and we understand  
11 that.

12 We don't -- certainly don't view getting this type of  
13 limited stay relief a ministerial matter from this Court by any  
14 stretch of the imagination, but given the underlying  
15 circumstances, given what we're asking for, given the fact that  
16 we've already indicated in our moving papers that we would pay  
17 the cost of reproduction, there really is nothing else to do  
18 for the debtor other than if the debtor chooses resisting the  
19 motion before the District Court in the PSLRA -- in connection  
20 with the PSLRA.

21 So we believe that a process by virtue of the prior  
22 decisions has been outlined and we're attempting to follow that  
23 process. We believe that process makes sense because  
24 ultimately for purposes of the securities litigation, it is the  
25 District Court that makes the determination as to whether we

1 should get access on the merits prior to the motions to  
2 dismiss.

3 We're simply taking the first step that we believe is  
4 a process that's been endorsed in this Court previously.

5 THE COURT: Okay.

6 MR. ETKIN: And, certainly, Your Honor, and as  
7 evidenced by the orders entered previously in the -- in  
8 Enron and Worldcom, privilege issues that are raised can be  
9 dealt with. Those are lawyer-driven issues that can be  
10 resolved and certainly, nothing is intended to waive those  
11 rights to the extent that they -- that they still exist.

12 Your Honor, the bottom line is that the debtors in  
13 their papers really have advanced no argument whatsoever to  
14 distinguish this case from the circumstances in Worldcom and  
15 Enron.

16 THE COURT: Well, but the problem is I just don't  
17 really what those -- all I have is our orders. I don't really  
18 what those circumstances were. I don't know if they were under  
19 deadlines from Judge Harmon or Judge Cote. It's just -- I see  
20 that there's a -- there was an order granted and it recognized  
21 the type of relief you're seeking here, but I just don't know  
22 what the exigencies were to do it that way rather than the  
23 other way.

24 MR. ETKIN: Well, in each of those --

25 THE COURT: I don't know whether there was a hearing

1 on the Sonax factors either.

2 MR. ETKIN: Your Honor, in terms of the Sonax  
3 factors, I think in the first instance, the Sonax factors  
4 really are -- they are certainly relevant, but more relevant to  
5 circumstances where a party is seeking relief from the State  
6 and continue with litigation in a court outside of the  
7 Bankruptcy Court.

8 We're not seeking that kind of relief. There have  
9 been decisions which we have cited in our papers where limited  
10 stay relief --

11 THE COURT: No, I know. You're saying basically the  
12 debtor doesn't have to do anything. It just has to move the  
13 boxes from one place to another.

14 MR. ETKIN: That's --

15 THE COURT: And you'll pay for moving them.

16 MR. ETKIN: That's -- that's the bottom line, Your  
17 Honor.

18 THE COURT: Right. Okay.

19 MR. BUTLER: Your Honor, the Court articulated what  
20 our concern is. We concur that this is a two-step process, but  
21 we think the first step is in the District Court, not here.  
22 Our understanding of what these -- of what the plaintiffs in  
23 Enron and Worldcom did was once they got the stay relief from  
24 the Bankruptcy Court, they ran to the District Court and said  
25 hey, District Court, give us -- grant us the relief because



1 there's no reason why you shouldn't, we already got the  
2 Bankruptcy Court approval, and so they used Your Honor's  
3 determination as the sword to go into the District Court.

4           A couple of initial comments, Your Honor. This is  
5 not Enron, and this is not Worldcom. Whatever our pre-petition  
6 accounting issues were, they were not the proximate cause and  
7 had no relationship to the commencement of these Chapter 11  
8 cases. These Chapter 11 cases were filed as Your Honor knows  
9 because of our high legacy costs, because of increasing  
10 commodity prices and because of the deterioration of the North  
11 American automotive industry. It had nothing to do with  
12 accounting.

13           Now, we had pre-petition accounting issues that we  
14 will be addressing, but that is not why we are in Bankruptcy  
15 Court.

16           Number two, Your Honor, what plaintiffs are asking  
17 for really is an advisory opinion from Your Honor. They're  
18 asking without any evidentiary record here, there's none.  
19 They've offered no evidence. All right. They basically said  
20 it's up to the debtors to prove why we're prejudiced. Well,  
21 Your Honor, they failed to meet their burden, which I believe  
22 under Sonax means we don't even have to do anything and --

23           THE COURT: Well, but they're saying that -- I mean,  
24 let me paraphrase it and Mr. Etkin can correct me. They're  
25 saying that it's there, why not let us get started on reading

1 it now rather than six months from now.

2 MR. BUTLER: Because, Your Honor, that's not what  
3 PSLRA allows them to do. They're asking you to give them here  
4 on an advisory basis the ammunition to go to Judge -- to go to  
5 Judge Rosen, who by the way, just got these cases within the  
6 last thirty days. Talk about infancy of a litigation. These  
7 were just consolidated. They're just now in front of the  
8 Court. There's been no major activity, as I understand, in the  
9 District Court since that act occurred.

10 This motion was filed thirty-eight days into our  
11 bankruptcy and was heard less than ninety days after the  
12 commencement of these cases without a scintilla of evidence as  
13 to why it's necessary. They are a year probably or more away  
14 from being able to deal with the issues in the District Court,  
15 and Your Honor, we don't think it's fair. We think it's highly  
16 prejudicial to the debtors to have them come in here and say to  
17 Your Honor without any evidentiary demonstration by us.

18 Disregard Sonax because that doesn't apply to us.  
19 Disregard -- just take the Enron opinions and the  
20 Worldcom opinions which were very different cases and which, by  
21 the way, Your Honor, I don't believe based on our review of the  
22 record and some familiarity that I had with those cases, I  
23 don't believe that the issue we've raised in our papers was  
24 raised in those cases, which is if it's a two-step process, the  
25 first step is that the plaintiffs have to go to District Court

1 and get relief from the PSLRA because then they're able to come  
2 here and demonstrate cause or at least argue they have cause.  
3 I'll argue that isn't even cause frankly when we get to that,  
4 but they can't demonstrate that.

5           They come before you with no ability to demonstrate  
6 any cause. They tell you -- if they're being straightforward,  
7 they tell you that Judge Rosen received these cases within the  
8 last thirty days. There has been no substantive activity in  
9 the cases since Judge Rosen received the consolidated cases.  
10 There's been no certification. There has been no -- the  
11 schedule set either for filing motions to dismiss.

12           You know, there -- you know, I mean, this is in such  
13 a different posture than those cases, Your Honor, and we really  
14 believe we have no issue. If they want to take a shot at --  
15 you know, on that record in front of Judge Rosen on getting the  
16 PSLRA stay lifted, if they want to be able to do that and you  
17 want Your Honor -- we don't have an issue with that. We'll  
18 take that battle on in the District Court, but only if they're  
19 able to Judge Rosen to change what Congress had intended should  
20 they then be able to come back here, and at that point in time,  
21 we ought to have an evidentiary hearing and deal with the  
22 Sonax factors.

23           We think Your Honor has it exactly right, and we do  
24 think it's prejudicial, and you know, counsel can argue that  
25 it's not, but Your Honor, for example, to just give one example

1 and, you know, maybe this matters, maybe it doesn't, but the  
2 reality is, Your Honor, the accounting issues here while  
3 important to plaintiffs are not the primary factors in this  
4 case, and as Your Honor knows, we were retained in July of last  
5 year to help on the restructuring.

6           Clearly, we need to get up to speed and understand  
7 those issues at some point. That hasn't even occurred in these  
8 cases. We've been a little busy in the first ninety days of  
9 these cases doing a few other things like getting financing in  
10 place and dealing with claims, trading -- assets and all the  
11 issues we've dealt with, with the committee. We haven't had --  
12 and Mr. Rosenberg will tell you, we haven't had even the  
13 opportunity to have the initial briefing with the committee on  
14 these matters which they've requested and which we've agreed to  
15 provide and both Mr. Rosenberg and I need to get a little  
16 educated from special counsel about these matters. Neither of  
17 us had that opportunity.

18           This is extremely premature, Your Honor, and we think  
19 highly prejudicial, and we think the plaintiffs have got it  
20 exactly wrong and the Court has got it right.

21           Go to the District Court, see if you can get relief.  
22 If you can get relief from the District Court, then at least  
23 you arguably can say you've got cause under Sonax here and then  
24 the -- then the debtors are in a position with the creditors  
25 committee and the other parties in this case to take on the

1 issue of whether or not in the balance of harms and prejudices  
2 which is a bankruptcy calculation by this Court whether or not  
3 Your Honor ought to then lift the stay or modify the stay in  
4 this case.

5 And we'd ask Your Honor to deny the relief being  
6 request other than giving them the limited opportunity to go  
7 speak to Judge Rosen.

8 THE COURT: Okay.

9 MR. ROSENBERG: Good morning, Your Honor. Robert  
10 Rosenberg for the creditors committee.

11 Our silence until now on the various matters of  
12 course indicates consent or assent agreement with the debtors'  
13 position, and that of course is equally true on this one.  
14 However, I believe on this one, the issues are sufficiently  
15 significant that we ought to address them on the record.

16 Needless to say, we do agree with the assessment that  
17 Mr. Butler just stated. As he stated, we are struggling to get  
18 educated on what the issues are in this case and what should  
19 happen to them.

20 As Mr. Butler indicated, this was not the driving  
21 factor here in arriving in Bankruptcy Court unlike Enron and  
22 Worldcom, and therefore, simply is not at this moment at the  
23 very top of the issue list.

24 We strongly agree with Your Honor that the -- the  
25 plaintiffs here simply have the procedure backwards because

1 there is no reason to consider the balance of prejudice kinds  
2 of issues under Section 362 until and unless the issue is ripe  
3 and relevant at the District Court issue -- level, and without  
4 an evidentiary hearing here, I daresay that I have a very hard  
5 time believing that there are a bunch of boxes sitting in a  
6 corner simply waiting for Federal Express pickup and that's all  
7 that's involved here.

8           To the extent that documents were previously  
9 delivered to a special committee at SEC, a justice department,  
10 whatever, that hardly suggests to me that they don't need to be  
11 entirely re-reviewed in connection with delivery to a private  
12 litigant, re-reviewed for privilege, re-reviewed for  
13 confidentiality, issues that may not be quite as relevant in  
14 the context of an internal or a governmental investigation.

15           So, unless the debtor tells me otherwise, I don't  
16 think this is a situation of saying to Federal Express come  
17 pick them up. Accordingly, I do think that an evidentiary  
18 hearing is required on the balance of hurt here and it is  
19 absurd to have one in a vacuum in a moot situation where the  
20 District Court has not said production is ripe.

21           Thank you.

22           THE COURT: Do you -- Mr. Rosenberg, do you remember  
23 when Enron filed? I'm just looking at these orders.

24           MR. ROSENBERG: I certainly do, Your Honor. December  
25 2001.

1 THE COURT: Okay. Fine.

2 MR. ETKIN: Your Honor, obviously, the primary issue  
3 that's being raised is really somewhat of an chicken-and-egg  
4 proposition with respect to the District Court and this Court.

5 Mr. Butler talks about what Congress intended. I  
6 didn't see anything about the debtors' papers that pointed out  
7 some legislative history as to how to resolve that issue.

8 I think the only thing that the Court has to provide  
9 some guidance as to how that issue has been resolved is how it  
10 has, in fact, been resolved previously in the two cases that  
11 have addressed this issue, and I think that raising the  
12 question of whether the filing itself was precipitated by the  
13 accounting improprieties is not really the issue.

14 The issue is what is the stat of play with respect to  
15 those accounting improprieties going into the Chapter 11  
16 proceeding, and there, the similarities are striking with  
17 respect to restatements for years, admitted accounting  
18 improprieties with respect to prior financial statements,  
19 multiple government investigations. There are no distinctions  
20 as far as that is concerned.

21 And, in fact, if there weren't those governmental  
22 investigations and if there wasn't the previous production of  
23 documents to the government with respect to these issues, we  
24 wouldn't be making this motion.

25 We're not seeking discovery from day one with respect

1 to our pending securities litigation. We're seeking access to  
2 documents that have already been produced, already have been  
3 reviewed, already have been indexed.

4 Now, Mr. Rosenberg talks about the prospect of having  
5 to review them again where the circumstances are different.  
6 Your Honor, those are red herrings. Those are roadblocks being  
7 thrown up now with respect to dealing with what is -- what is  
8 the obvious, and the obvious is that there's -- that there's no  
9 desire to impede the debtor from exercising whatever privilege  
10 objections that they might have or whatever privilege that they  
11 might want to assert.

12 The orders that were previously entered in the prior  
13 cases specifically provided for that. The Worldcom motion was  
14 hotly contested by the debtor. Judge Gonzales issued an  
15 opinion --

16 THE COURT: Well, no, he didn't issue an opinion.

17 MR. ETKIN: He signed an order. I apologize. He  
18 signed an order based upon his decision and requested an order  
19 to be presented. That order was signed. That order provides  
20 all of the safeguards that the debtor could possibly want with  
21 respect to those documents.

22 This is really an example of an effort to create  
23 issues with respect to what has been the prior production of  
24 documents that have been reviewed, indexed and are waiting to  
25 be -- and are waiting to be copied subject to privilege



1 objections which is lawyer-driven not debtor-driven, but a  
2 lawyer-driven process, and delivered over to the lead  
3 plaintiffs in connection with their obligations and  
4 responsibilities to move forward on behalf of the class that  
5 they represent with respect to the litigation against non-  
6 debtor third parties.

7           We understand what the PSLRA requires. That's a  
8 different showing to be made to a different court. The debtor  
9 does not have to do one thing until the District Court decides  
10 that issue, similar to what was decided in the Enron and  
11 Worldcom cases. There's no need for a chicken-and-egg issue.  
12 There's no need to reinvent the wheel with respect to how this  
13 process has worked previously. It should work no differently  
14 in this case.

15           THE COURT: Okay. All right.

16           I have in front of me a motion by the lead plaintiffs  
17 in the Delphi Corporation securities litigation for a limited  
18 modification of the automatic stay under Section 362 of the  
19 Bankruptcy Code to permit them to receive all documents  
20 previously provided by Delphi to third parties including, an  
21 internal audit committee investigation as well as the SEC and  
22 others.

23           The issue as I see it is really pretty limited at  
24 this point, which is an issue of timing. That is because the  
25 movants acknowledge that even if I were to lift the automatic

1 stay to permit the production of such documents, they could not  
2 be produced until the movants also obtained relief from the  
3 District Court presiding over the securities litigation under  
4 the Private Securities Litigation Reform Act of 1995, the  
5 PSLRA, which contains a separate stay driven by different  
6 considerations than the automatic stay, which separately  
7 currently stays the pendency of discovery in the underlying  
8 securities litigation.

9           To me, the first gatekeeper issue is obtaining relief  
10 from the stay -- relief from the stay in this court under  
11 Section 362 to seek relief from the PSLRA stay. That's the  
12 first gatekeeper issue.

13           In my mind, logically, the next gatekeeper issue is  
14 obtaining relief from the District Court under the PSLRA. The  
15 District Court is dealing obviously not only with that statute  
16 but with discovery issues generally in consolidated litigation  
17 that is clearly at a very early stage, and it seems to me that  
18 I cannot reasonably predict what the District Court would do in  
19 connection with an application for relief under the PSLRA for  
20 production of documents or what sort of timetable the District  
21 Court will set for the production of documents.

22           Given that fact, it seems to me that what I'm really  
23 being asked here to do to the extent it goes beyond a request  
24 for relief from the stay simply to go ask the District Court  
25 for relief under the PSLRA, is in essence to decide an issue in

1 a vacuum or to give an opinion that is not at this time ripe to  
2 be given.

3           To my mind, that would end the issue but for the fact  
4 that apparently at least in two instances, a similar issue was  
5 raised in the Bankruptcy Court in front of Judge Gonzales first  
6 in the Enron case and then second in the Worldcom case. The  
7 movants have attached orders issued by Judge Gonzales in those  
8 two cases, the first of which I note was issued very early in  
9 the Enron case and does not mention the PSLRA, and it's not  
10 clear to me whether this issue was even considered in  
11 connection with that order.

12           The second Enron order and the Worldcom order  
13 attached do specifically note that the relief granted to the  
14 securities litigation plaintiffs is still subject to any  
15 determination by the District Court presiding over the  
16 securities litigation, including under the PSLRA, but I cannot  
17 tell much more from those orders, which are just that: orders;  
18 they don't contain findings of fact, and there's no oral ruling  
19 that would lay out findings of fact and conclusions of law as  
20 to why Judge Gonzales granted that particular relief.

21           One of the things that's not clear to me is whether  
22 there were any communications directly or indirectly from Judge  
23 Harmon or Judge Cote, the judges presiding over the District  
24 Court litigation referred to in those two orders respectively,  
25 about the timing issues involved or the like.

1           So I think that not only as matter of judicial  
2 economy, but frankly to avoid deciding an issue that's not  
3 ripe, all that I will grant here today is relief from the stay  
4 to seek relief from the PSLRA stay in the District Court.

5           If such relief is granted and the facts will be clear  
6 as to what -- what discovery if any the District Court  
7 authorizes under the PSLRA and then I'll decide whether the  
8 automatic stay should in any way restrict that discovery.  
9 ~~Frankly~~, if, in fact, it's simply a matter of picking up boxes  
10 and limited review by counsel, it may not be much of an issue.

11           On the other hand, I'm not going to get into the  
12 facts at this point because I think it's premature and there  
13 may be other considerations that are relevant under the  
14 Sonax factors.

15           Moreover, at that time, there may be a more complete  
16 discovery plan or a more complete litigation schedule that will  
17 help me decide the issue. So I will grant relief from the  
18 automatic stay for the limited purpose of seeking relief from  
19 the District Court under the PSLRA.

20           And, Mr. Etkin, I will carry the rest of the motion.  
21 You can put it on the docket on short notice. I don't think  
22 that there's a need to have a lengthy delay after the District  
23 Court rules.

24           MR. ETKIN: Thank you, Your Honor.

25           THE COURT: So I don't know which one of you should

1 submit an order to that effect.

2 MR. BUTLER: Your Honor, we'll draft an order and  
3 show it Mr. Etkin on that matter (sic).

4 Your Honor, also just so the record is clear today  
5 because I don't want either the debtors or the lead plaintiffs  
6 to be in a position to characterizing what occurred here today  
7 in front of the District Court along the lines, say, gee, Judge  
8 Rosen, you know, go ahead and approve this because it will --  
9 you know, Judge Drain is ready to sort of, you know -- you  
10 know, open the floodgates here.

11 THE COURT: I think there are very different issues  
12 involved. I think the PSLRA addresses quite different issues  
13 than the automatic stay addresses and I wouldn't presume to  
14 give a District judge any sort of direction about how he or she  
15 should manage their discovery docket or the PSLRA, and really  
16 my ruling is based simply on, first, that deference and then  
17 issues of ripeness.

18 MR. BUTLER: And may the order also include a  
19 statement that the rights of the debtor and the creditors  
20 committee are fully reserved -- preserved in connection with  
21 the --

22 THE COURT: Yes. I mean, everyone's -- yes.

23 MR. BUTLER: I just think --

24 THE COURT: I think -- normally, I recommend people  
25 don't do that because then everyone wants to stand up and

1 reserve their rights, but I guess in this instance, it's  
2 appropriate so that there's no confusion with another court,  
3 but obviously, the class action plaintiffs' rights are fully  
4 preserved, too.

5 MR. BUTLER: We understand that, Your Honor.

6 THE COURT: Okay.

7 MR. BUTLER: Thank you very much, Your Honor.

8 Your Honor, the next matters on the agenda are  
9 Matters 33 and 34. These involve the application of the  
10 debtors for the retention of Deloitte and Touche, LLP as  
11 independent auditors and accountants to the debtors only with  
12 respect to the 2005 fiscal year that has been completed.

13 The debtors have previously announced that they have  
14 -- after a request for a proposal request that the debtors have  
15 engaged other accountants going forward and will be filing a  
16 separate application in connection with the retention of  
17 auditors for the 2006 fiscal years --

18 THE COURT: I think that's on my desk, actually. I  
19 think it's on my desk, isn't it? Yeah.

20 MR. BUTLER: Yeah. So it's -- that we'll be moving  
21 forward on that separately, Your Honor.

22 THE COURT: All right.

23 MR. BUTLER: Your Honor, the -- Matter No. 33 is lead  
24 plaintiffs' motion to compel deposition testimony filed at  
25 Docket Number -- I believe it's 1618 and we have filed --